



ON - THE - JOB

Sherrie M. Hayashi, Editor-in-Chief

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Commissioner's Corner.....

Legislative Update - 2007

This was a very successful year for the Labor Commission. We were successful in seeing the passage of three key pieces of legislation which affect the way in which we do business; and also saw an important salary increase for our employees. Legislative items passed and signed by Governor Huntsman include:

S.B. 85 - Mining Legislation, sponsored by Sen.

Mike Dimitrich. This allows the Boiler and Elevator Safety Division, which administers the testing and certification program for coal miners, to use the fees collected from the miners as "dedicated credits"

to administer the testing program, rather than have those fees go to the general fund.

Workers Compensation legislation:

S.B 108 - Worker's Compensation Time Limitations, sponsored by Sen. Ed Mayne, changes the requirement that an injured worker must seek treatment every three years (with a few exceptions) to an "incur and submit" system. Under the new system, there will be no time limitations on seeking medical treatment, but injured workers must submit their bill to the workers compensation carrier within one year of incurring the treatment.

S.B. 109 - Structured Settlements, by Sen. Ed Mayne. The workers' compensation system provides injured workers with modest disability benefits to pay the necessities of life. Some companies, known as factoring companies, look at these monthly payments as a business opportunity where they can buy the injured worker's future monthly benefits in exchange for a

small lump sum payment. This legislation would require that the Labor Commission approve all structured settlements involving workers' compensation benefits.

State employees received a 3.5% Cost of Living Adjustment (COLA), and agencies were given an additional 1.5% discretionary funding appropriation for salary increases. The money is to be used to address inequities, or to adjust salaries for specific positions.

The Workers Compensation Advisory Committee and the Labor Commission also worked jointly to assure that the integrity of the

recommendation and decision-making authority of Workplace Safety Funds were preserved. An important piece of legislation, H.B. 137, Pain Medication Management and Education, sponsored by Rep. Bradley Daw which is being spearheaded by the Health Department, will help create guidelines and educate the medical community and

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Commission employees remain dedicated to performing the duties of their position and serving the people of the state in a professional and efficient manner.

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Fair Housing and the American Dream: Challenges for American Indians

By Elena Bensor, Outreach Coordinator

In a study conducted for the Department of Housing & Urban Development, “research found that the level of discrimination faced by Native Americans in the rental markets . . . is *greater than* the national levels of housing discrimination experienced by African American, Hispanic, and Asian and Pacific Islander renters.” (*Discrimination in Metropolitan Housing Markets: Phase III – Native Americans*)

The goal of the Utah Antidiscrimination & Labor Division (UALD) has always been to prevent housing discrimination from occurring, by partnering with community organizations to effectively identify barriers to housing, and get involved in the conception of creative solutions.

In 2004, the UALD Education and Outreach program became actively involved with an emerging advisory board. The Utah American Indian Housing Advisory Board (UAIHAB) is the product of a group of visionaries who under the sponsorship of Senator Hatch’s office and Forrest Cuch, Director of the Utah Division of Indian Affairs, chose to combine their efforts towards the fulfillment of a common cause to assist American Indians with overcoming housing barriers.

The founding members, Mr. George Dimas, Forrest Cuch, and various Utah tribal representatives, knew that in spite of the fact that some programs already exist to assist individuals with housing issues while living in reservation land, the Native American community of today faces distinctive challenges and multiple cultural barriers to housing, especially those relocating to an urban setting.

These barriers, such as the fact that in Utah, (a trend comparable to the rest of the nation) the majority of American Indians are no longer located in a rural or reservation area. In the last few years, due to mostly economic factors, an active out-migration from reservations into our cities has been taking place. According to the Division of Indian Affairs, about 55% of Utah’s American Indians are presently living

in Utah’s cities. This is not a trend that seems to be slowing down or that will change any time soon.

The challenges involved in relocation have much to do with cultural differences, very similar to what the refugee community faces. These include language barriers, or finding culturally relevant information and support networks, including the lack of understanding on how existing systems work. Prime examples are the lack of financial literacy (how to open a bank account), or more complex processes such as understanding housing or rental applications, or how

to buy a house. The lack of rental history- where some American Indians previously have owned their homes at the reservation, or lack of credit history, since most conduct transactions on a trade or for cash basis at the reservation, prevent them from securing housing or passing credit and background checks. For

this population, a community-based connection from a trusted source who is culturally competent, is an increasing factor on whether newly arrived American Indians utilize existent resources and become well established, or eventually became homeless and financially dependent in our government resources.

Last year through our involvement with the UAIHAB, the UALD visited the housing authorities of the Confederated Tribe of Goshute Indians in Wendover/Ibapah, the Northwest Band of Shoshone Nation, and most recently, the White Mesa Ute Tribal Council in Blanding, in an effort to further the trust that is absolutely essential with the American Indian community, and to support the development of networks to provide resources for the increased influx of American Indians migrating into our cities.

As a result of these visits to tribal entities, we are in the process of developing a presentation in conjunction with the Division of Indian Affairs, which will have a



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New Utah OSHA Administrator in Pursuit of a Higher Level of Excellence

By Robyn Barkdull - Public Information Officer

Commissioner Sherrie Hayashi has appointed Louis M. Silva as Administrator of the Utah Occupational Safety & Health (UOSH) Division of the Utah Labor Commission. UOSH is the State Plan Program which satisfies federal OSHA requirements.

UOSH is comprised of both Consultation and Compliance sections providing workplace safety and health assistance through

consultation, training, educating employees and employers, and establishing and enforcing occupational safety and health standards.



Mr. Silva, who holds both a B.S. degree in Business Administration and also a B.S. in Accounting and Finance, brings to the position over 20 years of successful experience in business administration. His experience includes 12 years in the field of occupational safety and health management, with nine of those years devoted to managing OSHA State Plan Programs.

The UOSH Administrator is a very complex position. Although Utah has adopted a State Plan Program, interfacing with federal OSHA is critical and it is essential the administrator be proficient in both UOSH and federal OSHA standards. Louis Silva brings a great deal of experience and foresight to the position, and his successful efforts as Consultation Manager in proactively educating employers on safety and health issues will lend great balance in enforcing occupational safety and health standards in his oversight of the Division.

Mr. Silva believes his appointment as UOSH Administrator will afford him the opportunity to work with other government agencies, the private sector, and Utah employers and employees in pursuit of a common mission and desire: "To make our beautiful state of Utah a safer place to work; elevating the safety and health culture of Utah to a higher level of excellence."

FAIR HOUSING AND THE AMERICAN DREAM...

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cultural diversity component. This cultural perspective will be developed to aid the Tribal Councils and their Housing Authorities, as well as anyone interested in the challenges affecting tribal housing issues, to understand the cultural differences and perceptions of American Indians, and how these perceptions affect their ability to secure housing and remain in housing (when available). Further topics identified for inclusion are a culturally relevant overview of the lending process for the first-time home buyers, and predatory lending issues for urban American Indians, including the challenges related to home maintenance and upkeep.

Remember that April is Fair Housing month, and as we celebrate this year's theme: "***Fair housing it's not an option, it's the law***" we at the Labor Commission remain committed to ensuring that equal housing opportunity is an option for everyone.

If you have any questions about the Utah Fair Housing Act, please contact the Utah Antidiscrimination and Labor Division at **801-530-6801** or **1-800-222-1238** or visit us at our website: **www.laborcommission.utah.gov**



Employing Minors - An Overview of Child Labor Law

By Brent Asay, Wage Claim Unit Manager

With the summer season looming and some teenagers starting to think more about a summer job, it is a fitting time for a brief overview of child labor law. From both a compliance and prevention standpoint, the key is that Utah employers keep themselves knowledgeable of and updated on the child labor laws.



There are two child labor law sources: The federal Fair Labor Standards Act (FLSA) administered by the U.S. Department of Labor (USDOL) and the standards under the Utah Employment of Minors Act (UEMA) administered by the Utah Labor Commission. An employer may not be subject to the FLSA's jurisdiction, therefore, we suggest an employer contact the USDOL to find out whether or not it falls under that jurisdiction. UEMA covers all Utah private employers, regardless of their size and number of employees. Where both federal and state standards applicable to the employer overlap or conflict, the stricter standard applies.

Recently, in response to a letter from an ambitious 14 year old, I stated that while the money, experience, and

Minors have wage protection under UEMA, the Utah Minimum Wage Act, which basically means they are entitled to be paid wages based on the type and rate of pay the employer has promised, which must equal at least the minimum wage of \$5.15 an hour for all.

growth that minors gain from employment can be of much value and satisfaction to them, the law at the same time is concerned about the minor's safety and well-being in the workplace. These concerns are reflected in the standards for safe and age-appropriate jobs, number of work hours for minors under age

16, and lunches and breaks for all minor employees. These standards also take into account the public policy concern for the school attendance of minors under age 16. Furthermore, the law does not require, nor does the Labor Commission issue work permits. Instead, it is expected

that the employer will stay abreast of and make sure it is following the child labor laws.

UEMA does not apply to persons 16 years of age or older and for whom employment would not endanger their health and safety, if they have received a high school diploma, have received a school release certificate, are legally married, or are head of household. UEMA lists age-appropriate jobs for minors,

starting with the age of 10. These are not exhaustive lists, so where there are some types of jobs not specifically addressed by UEMA, the Commission evaluates them on a fact-specific, case-by-case basis. In determining what is hazardous, UEMA follows the FLSA hazardous jobs list that prohibits the employment of minors with respect to certain tasks and the use of certain tools and equipment. In general, minors are prohibited from using power-driven or pneumatic-driven tools, machinery, or equipment, although they are permitted to use any hand tools. A minor employed to do yard work must be at least age 16 to use a power lawn mower. UEMA's restrictions and age limitations do not apply to a minor's employment in agricultural work, including the operation of power-driven farm machinery, provided the minor is employed with the consent of his or her parent, guardian, or custodian.

Under UEMA, minors under age 16 are not to work: (1) before or after school in excess of four hours a day; (2) before 5:00 a.m. or after 9:30 p.m., unless the next day is not a school day; (3) in excess of eight hours in any 24-hour period; or (4) more than 40 hours in any week. Under FLSA, a minor under age 16 cannot work before 7:00 a.m. on a school day or after 7:00 p.m. on a school night.

All minor employees, unlike adult employees, are entitled to receive rest and meal periods during their work shifts. Neither the minor nor the employer, nor they by mutual agreement, can waive these requirements. Accordingly, the employer is responsible to enforce the following requirements: The minor take a paid 10 minute rest period for every four hours of work, or fraction thereof, and the minor never work more than three consecutive hours without receiving a rest period.

The minor is also entitled to an unpaid meal period of at least 30 minutes that comes no later than the fifth consecutive hour from the start of work shift. For the meal period to qualify as unpaid time, during that time the minor must be completely relieved of all job tasks and duties and permitted to leave his or her workstation. Otherwise, it is compensable work time.

Minors have wage protection under UEMA, the Utah Payment of Wages Act, and Utah Minimum Wage Act, which basically means they are entitled to be paid wages based on the type and rate of pay the employer has promised, which must equal at least the minimum wage of \$5.15 an hour for all hours employed (federal minimum wage rate the same). "Hours employed" are defined as "all time during which an employee is required to be working, to be on the employer's premises ready to work, to be on duty, to be at a prescribed work place, to attend a meeting or training, and for time utilized during established rest or break periods excluding meal periods of 30 minutes or more where the employee is relieved of all responsibilities." In addition, the federal minimum wage and overtime laws administered by USDOL may apply.

Under the above laws, there are some coverage exemptions and exceptions to some of the general rules (exceptions apply for seasonal amusement park employment, for example). It is hoped that the Utah employer will do what is necessary to make sure it is knowledgeable of and fully complying with the child labor laws and applicable wage laws. That way, the employer can prevent its exposure to the civil, criminal, or administrative penalties that the Commission or USDOL may pursue against the employer for child labor law violations.

Utah child labor laws may be accessed through the online sequence: www.laborcommission.utah.gov, "UALD," and then "Wage Claim Unit," at which screen appears "Items of Interest" including topics of employment of minors or payment of wages. For federal child labor laws, the website links: www.youthrules.dol.gov/index.htm, www.wagehour.dol.gov or www.dol.gov/elaws. The Commission may be telephoned at (801) 530-6801, and USDOL at (801) 524-5706. Website video presentations on federal and state wage laws can be accessed through <http://jobs.utah.gov/edo/laborlaw/>.

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Legislative Update - 2007

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patients on the appropriate use of prescription opiates for pain management. This has a critical impact for the containment of workers' compensation costs, but rather than have the money appropriated directly from the Commission's Workplace Safety Fund, the Advisory Council recommended that current year grant funds be used for this important project.

Perhaps the most important news of all is that Commission employees remain dedicated to performing the duties of their position and serving the people of the state in a professional and ethical manner

Appellate Court Decisions

During the 1st quarter of 2007, Utah's appellate courts issued six decisions in workers' compensation cases—two from the Utah Supreme Court; four from Court of Appeals. These decisions can be read in full at www.utah/courts/supreme.

Salt Lake City v. Labor Commission, Case No. 20050774-SC, filed January 12, 2007. The Utah Workers' Compensation Act provides benefits for accidental injuries arising out of and "in the course of" employment. Usually, injuries that occur traveling to or from work are not considered to "arise in the course of" employment and are not compensable. This principle is known as the "coming and going" rule. But in ***Salt Lake City v. Labor Commission***, the Supreme Court held that even if Ms. Ross, a Salt Lake City police officer, was injured while driving home from work, her claim for benefits fell outside the "coming and going" rule and she was entitled to benefits.

Salt Lake City allows police officers to drive their squad cars home. The City implemented this program 1) to make officers available for immediate response, 2) to improve the care given to cars, and 3) to increase police presence. The City imposed several requirements on officers who used their cars for commuting—they had to have a gun, radio, identification, ticket book and report forms. They were also required to monitor police radio and, subject to certain exceptions, respond to emergency calls.

Ms. Ross participated in this program and used her squad car to drive to and from her work in Salt Lake

City to her home in Tooele.

On February 24, 2000, she was in a collision on her way home. She claimed benefits for her injuries.

The Commission's Administrative Law Judge and Appeals Board awarded benefits. The City appealed.

In its decision, the Supreme Court commented that the Court will "look closely to assure ourselves that the [Labor] Commission has liberally construed and applied the Act to provide coverage and has resolved any doubt respecting the right compensation in favor of an injured employee." The Supreme Court then affirmed the Commission's award of benefits, holding that an employee is entitled to benefits for injuries that occur during activities that are at least incidental to employment, i.e., activities that advance directly or indirectly the employer's interests. Because Ms. Ross's use of a squad car advanced the City's interests, she was entitled to benefits.

Ameritemps v. Labor Commission, Case No. 20051119 SC, filed January 19, 2007. Section 34A-2-413 of the Utah Workers' Compensation Act requires a two-step analysis of claims for permanent total disability compensation. First, the Commission must determine whether the worker has met §413's tests for a **preliminary** finding of permanent total



disability compensation and decide whether to rehabilitate the injured worker.

There has been confusion as to whether the employer/insurance carrier can obtain judicial review of the Commission's preliminary finding of disability, or must wait until after the rehabilitation/reemployment process is completed. In this case, the Supreme Court resolved that confusion by holding that the Commission's initial finding of permanent total disability is a final agency action and, therefore, subject to judicial review.

The four decisions issued by the Court of Appeals are briefly summarized as follows:

- ***Eastern Utah Broadcasting v. Labor Commission***, Case No. 20060370-CA, filed March 22, 2007, reversed a decision of the Commission's Appeals Board arising from a claim under §34A-3-106 of the Utah Occupational Disease Act for "mental or emotional injury." The Court of Appeals ruled that a claimant seeking benefits for such an injury must establish that his or her work-related mental stress is greater than his or her non-work stress.

- ***Salt Lake County v. Labor Commission***, Case No. 20060233-CA, filed February 23, 2007, applied the Supreme Court's decision in ***Salt Lake City v. Labor Commission***, discussed above, to a situation involving a Salt Lake County police officer injured while driving his County police vehicle.
- In ***Hall v. Labor Commission***, Case No. 20060493-CA, filed February 15, 2007, the Court of Appeals affirmed the Commission's determination that Mr. Hall was not entitled to temporary total disability compensation after his physician released him to full duty work.
- In ***Grint v. Labor Commission***, Case No. 20060254-Ca, filed April 5, 2007, the Court of Appeals affirmed the Commission's decision reversing an ALJ's award of various benefits to Mr. Grint, on the grounds Mr. Grint had not properly raised his claim to such benefits.



The "Rules" Corner

Pursuant to authority granted by the Utah Legislature, the Commission has recently adopted or is considering the following substantive rules. If you have questions or concerns about any of these rules, please call the Labor Commission at 801-530-6953.

Rule 614-1-4. UOSH	Electric equipment standards. This amendment adopts federal OSHA standards for design and installation of electrical equipment in places of employment.	Discussed at Public meeting on April 18, 2007; to be published during May 2007.
Rule 616-1 Boiler & Elevator Safety	Coal, Gilsonite, or other Hydrocarbon Mining certification. The Commission proposes to repeal and reenact this rule to remove outmoded or unnecessary provisions regarding mine inspections and adjudicative procedures. The reenacted rule also clarifies procedures for certification of individuals working in key safety-related positions.	To be published April 15, 2007.
R616-2-3 Boiler & Elevator Safety	Adoption of updated National Board Inspection Code and American Petroleum Institute Code. These changes consist of relatively minor technical and editorial amendments.	Effective April 24, 2007.

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Mark your calendar!
☒ **July 1, 2007**

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